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 Americas, Inc. (formerly PalmSource, Inc.)

**FILED**  
 JUN 17 2008  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

E-PASS TECHNOLOGIES, INC.,  
 Plaintiff,  
 v.  
 3COM, INC. and PALM, INC.,  
 Defendants.

No. C-00-2255 DLJ (EDL)  
Related Cases

E-PASS TECHNOLOGIES, INC.,  
 Plaintiff,  
 v.  
 VISA INTERNATIONAL SERVICE  
 ASSOCIATION and VISA U.S.A., INC.,  
 Defendants.

No. C-03-4747 DLJ (EDL)  
 Related Cases

E-PASS TECHNOLOGIES, INC.,  
 Plaintiff,  
 v.  
 PALMONE, INC., PALMSOURCE, INC.,  
 and HANDSPRING, INC.,  
 Defendants.

No. C-04-0528 DLJ (EDL)  
 Related Cases

**DECLARATION OF ANDREW T.  
 OLIVER IN SUPPORT OF ACCESS  
 SYSTEMS AMERICAS INC.'S  
 (FORMERLY PALMSOURCE, INC.)  
 MOTION FOR PAYMENT OF  
 EXPENSES**

Redacted – See version filed under seal

DECLARATION OF ANDREW T. OLIVER IN SUPPORT OF  
 ACCESS SYSTEMS AMERICAS INC.'S (FORMERLY PALMSOURCE, INC.)  
 MOTION FOR PAYMENT OF EXPENSES  
 Case No. C-04-0528 DLJ (EDL)

**ORIGINAL**

*to  
 EPL*

1 I, Andrew T. Oliver, hereby state and declare as follows:

2 I am an attorney employed as an associate with the law firm of Ropes & Gray  
3 LLP, which represents judgment creditor ACCESS Systems Americas, Inc. (formerly  
4 PalmSource, Inc.) (hereinafter "ACCESS") in Case No. C-04-0528 DLJ (EDL). I make this  
5 declaration in support of ACCESS' motion for sanctions, which I expect to be filed  
6 contemporaneously herewith.

- 7 1. Attached hereto as Exhibit 24 is a true and correct copy of this court's Order granting  
8 ACCESS' motion to compel, dated May 5, 2008.
- 9 2. Attached hereto as Exhibit 25 is a true and correct copy of Plaintiff E-Pass Technology  
10 Inc.'s Supplemental Responses to Defendant ACCESS Systems Americas, Inc.'s First  
11 Set of Post-Judgment Interrogatories, dated May 19, 2008.
- 12 3. Attached hereto as Exhibit 26 is a true and correct copy of a letter from Kelly  
13 Cunningham to Andrew Oliver, dated March 27, 2008
- 14 4. Attached hereto as Exhibit 27 is a true and correct copy of a document titled Plaintiff E-  
15 Pass Technologies, Inc.'s Second Supplemental Responses to Defendant ACCESS  
16 Systems Americas, Inc.'s First Set of Post-Judgment Interrogatories, dated June 13,  
17 2008.
- 18 5. On or about May 29, 2008, I spoke with Kelly Cunningham regarding ACCESS' request  
19 to be reimbursed for the expenses it incurred in pursuing its motion to compel discovery,  
20 which was granted on May 5, 2008. I explained that Fed. R. Civ. P. 37(a)(5) formed the  
21 basis for the request. I also informed Mr. Cunningham of several violations of the order  
22 of May 5, 2008, and requested that E-Pass rectify those violations without requiring  
23 ACCESS to bring a motion under Rule 37(b)(2)(A). Mr. Cunningham requested an  
24 opportunity to discuss these issues with Daniel Cislo before responding. On June 5,  
25 2008, I spoke with Kelly Cunningham for well over an hour, regarding ACCESS'  
26 request to be reimbursed for the expenses it incurred in pursuing its motion to compel  
27 discovery and E-Pass' ongoing violation of the Court's May 5, 2008 order compelling  
28

DECLARATION OF ANDREW T. OLIVER IN SUPPORT OF  
ACCESS SYSTEMS AMERICAS INC.'S (FORMERLY PALMSOURCE, INC.)  
MOTION FOR PAYMENT OF EXPENSES  
Case No. C-04-0528 DLJ (EDL)

1 discovery. I again explained the basis for the request. Mr. Cunningham stated that he  
2 did not agree that E-Pass or its attorneys should satisfy the costs. However, I do not  
3 recall that Mr. Cunningham provided any legal or factual bases for his disagreement.

4 6. Attached hereto as Exhibit 28 is a true and correct copy of an email from Andrew Oliver  
5 to Daniel Cislo and Kelly Cunningham, dated June 2, 2008.

6 7. Attached hereto as Exhibit 29 is a true and correct copy of a letter from Daniel Cislo to  
7 Andrew Oliver, dated June 3, 2008.

8 8. Attached hereto as Exhibit 30 is a true and correct copy of an email from Andrew Oliver  
9 to Daniel Cislo and Kelly Cunningham, dated June 4, 2008.

10 9. Attached hereto as Exhibit 31 is a true and correct copy of an email from Andrew Oliver  
11 to Daniel Cislo and Kelly Cunningham, dated June 5, 2008.

12 10. Attached hereto as Exhibit 32 is a true and correct copy of a first (two page) letter from  
13 Daniel Cislo to Andrew Oliver, dated June 6, 2008.

14 11. Attached hereto as Exhibit 33 is a true and correct copy of a second (three page) letter  
15 from Daniel Cislo to Andrew Oliver, dated June 6, 2008.

16 12. Attached hereto as Exhibit 34 is a true and correct copy of an email from Andrew Oliver  
17 to Daniel Cislo, dated June 10, 2008.

18 13. Attached hereto as Exhibit 35 are true and correct copy of invoices for services rendered  
19 in March and April 2008, by Ropes & Gray LLP for ACCESS Systems Americas, Inc  
20 **(FILED UNDER SEAL)**. The invoices contain confidential business information of  
21 ACCESS Systems Americas, Inc. and Ropes & Gray LLP. The invoices have been  
22 redacted to remove information that is unrelated to the instant motion, work product,  
23 and/or attorney-client privileged. The hourly rates listed in the invoices are customary  
24 hourly charges for the listed individuals.

14. The invoices in Exhibit 35 show the following reasonable expenses incurred by ACCESS in making the motion to compel discovery:

<u>Expense</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
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Redacted – See version filed under seal

15. Attached hereto as Exhibit 36 is a true and correct copy of a document bearing production numbers PJ00613 – 618, produced by E-Pass Technologies, Inc. (**FILED UNDER SEAL**). This document has been marked “Highly Confidential – Attorney’s Eyes Only” by E-Pass.
16. Attached hereto as Exhibit 37 is a true and correct copy of a letter dated June 13, 2008, from Kelly Cunningham to Andrew Oliver.

DECLARATION OF ANDREW T. OLIVER IN SUPPORT OF  
ACCESS SYSTEMS AMERICAS INC.’S (FORMERLY PALMSOURCE, INC.)  
MOTION FOR PAYMENT OF EXPENSES  
Case No. C-04-0528 DLJ (EDL)

- 1 17. Attached hereto as Exhibit 38 is a true and correct copy of pages 118-120 of the  
2 February 8, 2005, deposition transcript. of Hartmut Hennige.
- 3 18. Attached hereto as Exhibit 39 is a true and correct copy of documents bearing  
4 production numbers PJ00673, PJ01533, PJ01534, and PJ01542, produced by E-Pass  
5 Technologies, Inc. (**FILED UNDER SEAL**). These documents have been marked  
6 "Highly Confidential – Attorney's Eyes Only" by E-Pass.
- 7 19. Attached hereto as Exhibit 40 is a true and correct copy of documents bearing  
8 production numbers PJ01461 – 65, PJ01459, PJ01497, and PJ01501 – 08, produced by  
9 E-Pass Technologies, Inc. (**FILED UNDER SEAL**). These documents have been  
10 marked "Highly Confidential – Attorney's Eyes Only" by E-Pass.
- 11 20. Attached hereto as Exhibit 41 is a true and correct copy of documents bearing  
12 production numbers PJ01428 and PJ01429, produced by E-Pass Technologies, Inc.  
13 (**FILED UNDER SEAL**). These documents have been marked "Highly Confidential –  
14 Attorney's Eyes Only" by E-Pass.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed  
16 at Palo Alto, California on June 17, 2008.

17  
18   
19 \_\_\_\_\_  
20 Andrew T. Oliver  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT 24

FILED

MAY 15 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

v.

3COM, INC. and PALM, INC.,

Defendants.

No. C-00-2255 DLJ (EDL)

Related Cases

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

v.

VISA INTERNATIONAL SERVICE  
ASSOCIATION and VISA U.S.A., INC.,

Defendants.

No. C-03-4747 DLJ (EDL)

Related Cases

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

v.

PALMONE, INC., PALMSOURCE, INC.,  
and HANDSPRING, INC.,

Defendants.

No. C-04-0528 DLJ (EDL)

Related Cases

~~[PROPOSED]~~ ORDER GRANTING-IN-PART JUDGMENT CREDITOR ACCESS SYSTEMS AMERICAS, INC.'S MOTION TO COMPEL AS MODIFIED



On March 25, 2008, Judgment Creditor ACCESS Systems Americas, Inc. (formerly PalmSource, Inc.) ("ACCESS") filed a motion for order compelling Judgment Debtor E-Pass Technologies, Inc. ("E-Pass") to respond to interrogatories and requests for production of documents. The parties fully briefed the motion. The Court held a hearing on April 29, 2008. Upon consideration of the parties' submissions and oral arguments, the Court **ORDERS**:

1. No later than <sup>14</sup>~~10~~ days after entry of this order, E-Pass shall serve upon ACCESS, as provided in Civil L.R. 5-5(a), substantive and complete responses to each of ACCESS' post-judgment interrogatories nos. 1 through 7, revised as discussed in paragraph 4 below.

2. No later than <sup>14</sup>~~10~~ days after entry of this order, E-Pass shall produce to ACCESS all documents and things responsive to each of ACCESS' post-judgment requests for production of documents nos. 1 through 25, revised as discussed in paragraph 4 below.

3. At this time, the Court will not engage in the exercise of counting the number of interrogatory subparts. It appears to the Court that ACCESS' interrogatories nos. 1 through 7 contain less than 25 subparts. However, in the event that the interrogatories contain more than 25 subparts, the Court permits all of the subparts, pursuant to Rule 26(b)(2), Fed. R. Civ. P.

4. In responding to the interrogatories and requests for production of documents, E-Pass shall use the definitions of terms that it set forth at pages 12 - 15 of Plaintiff E-Pass Technologies, Inc.'s Opposition to Defendant ACCESS Systems Americas, Inc.'s Motion to Compel (filed April 8, 2008), except as set forth herein:

a. in responding to interrogatory no. 1, the term "value" shall mean "objective, self-evident, or independent valuations of the asset previously made," without regard to who made the valuation;



1 b. in responding to interrogatory no. 2, the term "contractor" shall encompass only  
2 entities with whom E-Pass entered into contract(s) valued in excess of \$10,000, after June 1,  
3 2004;

4 c. in responding to interrogatories nos. 4 and 5, the term "consideration" shall  
5 encompass only all monetary or financial benefits;

6 d. in responding to interrogatory no. 5, the term "pledged" shall encompass only  
7 formal written pledges, regardless of whether E-Pass relied upon the pledge; and

8 e. in responding to interrogatory no. 6, the term "all reasons for" shall encompass  
9 only all monetary or financial benefits.

10 5. E-Pass is ordered to produce the requested shareholder contact information, including  
11 addresses and telephone numbers. E-Pass may designate this information with the appropriate  
12 confidentiality designation as provided in the protective order in place in case no. C-04-0528.

13 6. In responding to request for production no. 19, E-Pass is to produce (or where the  
14 documents are equally available E-Pass is to identify) to ACCESS, the requested documents.  
15 Request no. 19 shall be limited to documents filed with any federal or state regulatory agencies,  
16 licensing boards or agencies, and agencies or departments that administer corporations.

17 7. ACCESS has withdrawn, without prejudice, the portion of its motion requesting E-Pass'  
18 work product. Thus, because the issue is moot, the Court makes no ruling as to whether E-Pass  
19 must produce attorney work product.

20 SO ORDERED.

21 Dated: May 5, 2008

22 By:   
23 ELIZABETH D. LAPORTE  
24 United States Magistrate Judge

**EXHIBIT 25**

1 Daniel M. Cislo, Esq., No. 125,378  
2 Kelly W. Cunningham, Esq., No. 186,229  
3 CISLO & THOMAS LLP  
4 1333 2nd Street, Suite 500  
5 Santa Monica, California 90401  
6 Telephone: (310) 451-0647  
7 Telefax: (310) 394-4477  
8 Email: dancislo@cislo.com  
9 kcunningham@cislo.com

10 Attorneys for Plaintiff  
11 E-PASS TECHNOLOGIES, INC.

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

14 E-PASS TECHNOLOGIES, INC.,

15 Plaintiff,

16 vs.

17 3COM CORP. AND PALM, INC.,

18 Defendants.

19 E-PASS TECHNOLOGIES, INC.,

20 Plaintiff,

21 vs.

22 VISA INTERNATIONAL SERVICE  
23 ASSOCIATION and VISA U.S.A., INC.,

24 Defendants.

25 E-PASS TECHNOLOGIES, INC.,

26 Plaintiff,

27 vs.

28 PALMONE, INC., PALMSOURCE, INC.  
AND HANDSPRING, INC.,

Defendants.

) CASE NO. C-00-2255 DLJ

) CASE NO. C-03-4747 DLJ

) CASE NO. C-04-0528 DLJ

) Related Cases

) **PLAINTIFF E-PASS TECHNOLOGIES,  
INC.'S SUPPLEMENTAL RESPONSES  
TO DEFENDANT ACCESS SYSTEMS  
AMERICAS, INC.'S FIRST SET OF  
POST-JUDGMENT INTERROGATORIES**

1 PROPOUNDING PARTY: DEFENDANT ACCESS SYSTEMS AMERICAS, INC.  
 2 (formerly PALMSOURCE, INC.)

3 RESPONDING PARTY: PLAINTIFF E-PASS TECHNOLOGIES, INC.

4 SET NUMBER: ONE (1)  
 5

6 Plaintiff E-PASS TECHNOLOGIES, INC.'s ("E-Pass") hereby supplements its  
 7 responses to Defendant ACCESS SYSTEMS AMERICAS, INC.'S, formerly PALMSOURCE,  
 8 INC., ("Defendant") First Set of Post-Judgment Interrogatories. E-Pass acknowledges that the  
 9 Magistrate Judge has ruled on a number of E-Pass's objections to these interrogatories. E-Pass  
 10 nevertheless restates all of its objections for the record as part of this supplemental response so  
 11 as to avoid any appearance of waiver of the same and since some of these objections have been  
 12 articulated differently since E-Pass's original objections.

### 13 GENERAL OBJECTIONS

14  
 15 1. E-Pass objects to these interrogatories as untimely, as judgment has already been  
 16 entered in this matter, and a notice of appeal to the Federal Circuit has been filed.  
 17 Accordingly, it is inappropriate for a filing in this matter to be filed in the District Court at this  
 18 time. More specifically, this case is closed, discovery is closed, and Defendant therefore  
 19 propounded these interrogatories in violation of, at least, 28 U.S.C. § 1963 and Rule 26-2 of  
 20 the Northern District of California's Local Rules.

21 2. E-Pass objects to these interrogatories as this matter was adjudicated in the  
 22 District Court and Defendant had significant opportunity to obtain answers to these  
 23 interrogatories both before and during the course of the discovery.

24 3. E-Pass objects to this set of interrogatories to the extent that one or more of the  
 25 interrogatories contain the following multiple subparts such that the propounding party has  
 26 exceeded the limit of twenty-five (25) interrogatories permitted by Fed. R. Civ. P. 33 in  
 27 violation of, at least, this Federal Rule and Rule 33-3 of the Northern District of California's  
 28 Local Rules:

Interrogatory	Number of Discrete Subparts	Cumulative Total of Interrogatories
1	2	2
2	2	4
3	2	6
4	3	9
5	4	13
6	3	16
7	32	48

4. E-Pass objects to these interrogatories to the extent they impose obligations, burdens, and/or requirements beyond those set forth in the Federal Rules of Civil Procedure.

5. E-Pass expressly reserves the right to object on any permissible grounds, including grounds not enumerated herein, to the admissibility of any information produced in response hereto. E-Pass reserves its right to introduce, refer to, or rely on any information or document hereafter obtained by it or by any other party in this action, and to supplement its responses to these interrogatories.

6. E-Pass expressly incorporates each of these General Objections into each of its responses below.

### SUPPLEMENTAL RESPONSES TO FIRST SET OF INTERROGATORIES

#### Interrogatory No. 1.

Identify every asset of E-PASS, including the type of asset, value of the asset, location of the asset, and custodian of the asset, including all account numbers and financial institution identifying information.

#### Supplemental Objections and Response to Interrogatory No. 1.

Objection, seeks to invade the privacy and financial privacy of third parties. The balancing test favors nondisclosure here because there is no present public need nor any present interest of Defendant and under 28 U.S.C. § 1963 no such interest will exist until the appeal is

1 resolved, and then, only if such resolution is in Defendant's favor.

2 Objection, the interrogatory appears to be designed to harass third parties and interfere  
3 with their business relationships with E-Pass. In particular, Defendant is prematurely  
4 attempting to collect on the attorneys' fees award by acquiring any retainer amount that E-Pass  
5 might have delivered to its appeal counsel in its attempt to appeal this very award.  
6 Additionally, Defendant has no basis for contending that E-Pass has committed any action that  
7 might support a piercing the corporate veil, and nevertheless appears intent on performing a  
8 fishing expedition of E-Pass and anyone and any entity who has any relations to E-Pass.

9 Objection, vague and ambiguous, including in regard to terms and phrases such as  
10 "value of the asset." For many categories of assets, valuation is undetermined or subject to  
11 differences of opinion. Absent any dispute by Defendant, E-Pass will construe the term  
12 "value" as meaning any objective, self-evident, or independent valuation of the asset previously  
13 and as not requiring E-Pass to obtain or make a valuation of any asset of undetermined value  
14 for the purposes of responding to this interrogatory. In the telephonic meet and confer, the  
15 undersigned and Andrew T. Oliver, Esq. also agreed that the phrase "location of the asset, and  
16 custodian of the asset, including all account numbers and financial institution identifying  
17 information" should be construed as, "location of the asset, including the name and address of  
18 the financial institution or other custodian of the asset and any account number for the asset"  
19 and that the phrase "type of asset" should be construed as common sense dictates, giving  
20 examples such as, "real property," "lease," "furniture," and the like.

21 Objection, overly broad, unduly burdensome, and oppressive. The interrogatory asks  
22 for "every" asset of E-Pass imposing a search for information that would be unreasonable  
23 under the circumstances and under the Federal Rules and applicable case law.

24 Objection, not relevant to any presently ripe claim or defense in this matter, nor  
25 reasonably calculated to lead to the discovery of admissible evidence. The district court case is  
26 closed as is its discovery periods. Local Rule 26-2 prohibits parties from propounding  
27 discovery outside of the discovery period without first obtaining an order of the Court upon a  
28 showing of good cause or from filing any motion to compel discovery response more than seven

1 court days after the discovery cut-off. Additionally, 28 U.S.C. § 1963 prohibits enforcing a  
 2 judgment beyond the district in which the judgment was entered until all appeals have been  
 3 exhausted or until after the time for appeal had lapsed. Seeking post-judgment discovery  
 4 pertains to the judgment and E-Pass has authorized its previous local counsel which resides  
 5 within this judicial district to produce those documents requested of it.

6 Objection, this interrogatory constitutes at least two (2) subparts since requesting that  
 7 our client make of identify any valuation of each of its assets is not logically subsumed within  
 8 and necessarily related to the initial question of identifying each asset but instead constitutes a  
 9 discrete question. *See, inter alia, Safeco of America v. Rawstron*, 181 F.R.D. 441, 445 (C.D.  
 10 Ca. 1998) (holding that subparts are to be counted as one interrogatory if logically or factually  
 11 subsumed within and necessarily related to the primary question); and, *Trevino v. ACB*  
 12 *American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca. 2006) (holding the same finding multiple  
 13 subparts). Objection, the definition of "identify" constitutes a further improper attempt to  
 14 circumvent the subpart limitations on interrogatories. In particular, Defendant's definition of  
 15 identify is the following, amounting to numerous discrete questions not logically or factually  
 16 subsumed within the initial question of the date, identifying or descriptive code, name of person  
 17 who signed a document, and name of person to whom the document was addressed:

18 The terms "identify," "specify," "explain," and "state" mean:

- 19 (a) when applicable to a document, to provide at least:
- 20 (i) the date appearing on the document, and if no date appears thereon,  
the answer shall so state and shall give the date or approximate date  
such document was prepared;
  - 21 (ii) the identifying or descriptive Bates or other code number, file  
number, title or label of such document;
  - 22 (iii) the general nature or description of such document (i.e., whether it  
is a letter, memorandum, drawing, etc.) and the number of pages of  
23 which it consists;
  - 24 (iv) the name of the person who signed such document, and if it was no  
[sic] signed, the answer shall so state and shall give the name of  
each person or persons who prepared it;
  - 25 (v) any other authors and/or recipients;
  - 26 (vi) the name of the person to whom such document was addressed and  
the name of each person other than such addressee to whom such  
document or copies thereof were given or sent;
  - 27 (vii) the name of the person having possession, custody, or control of  
such document;
  - 28 (viii) whether or not any draft, copy or reproduction of such document



contains any postscript, notation, change, or addendum not appearing on the original of said document, and if so, the answer shall give the description as herein defined of each such draft, copy or reproduction;

- (ix) if such document was but is no longer in your possession or subject to your control, state what disposition was made of it and when and explain the circumstances of such disposition; and
- (x) if any such document is located in the hands of legal counsel, the term "identify" additionally means to state the location of the document immediately prior to its coming into the hands of legal counsel and identify the person who had prior custody of the document;
- (b) when applicable to a natural person, to provide at least:
  - (i) the person's full name and last known residential address;
  - (ii) the name and address of the person's last known employer; and
  - (iii) the person's last known title or position of employment;
- (c) when applicable to an entity, to provide at least:
  - (i) the full name of the entity;
  - (ii) the last known address of its principal office or place of business;
  - (iii) the type of entity (e.g., whether it is a corporation, partnership, or other type of entity);
  - (iv) the state, commonwealth, or territory of the United States or other government body in which it is registered to do business, together with the dates of registration; and
- (d) when applicable to an oral communication, to provide at least:
  - (i) the date, time and place of the communication;
  - (ii) the manner and substance of the communication;
  - (iii) the names of all persons who participated in, listened to, or had access to transcripts or summaries of the communication; and
  - (iv) the identity of all documents that memorialize, commemorate, summarize, record, or directly refer or relate in whole or in part to such communication.

Without waiving the general and specific objections above or previously served, E-Pass supplements its previous response to this request as follows: E-Pass has no assets located within the United States. E-Pass owns several patents on its technology, including U.S. Patent No. 5,276,311, which is in E-Pass's possession in the United Kingdom. The other patents owned by E-Pass issued from other countries and cover subject matter related to the innovation disclosed in this U.S. patent. E-Pass presently has no objective, independent valuation of this patent, but has produced as PJ00721 - PJ01294 a report from David Musker and Stephen Groom pertaining to certain of these patents, separate expert reports from Walter Bratic, Thomas La Porta, and R. Polk Wagner, and Joseph P. Francini, a portion of an expert report of James B. Gambrell, and a memorandum of understanding from Michael Cooper, each pertaining to the U.S. patent. E-Pass also refers Defendant to the January 12, 2007 and May 2,

1 2007 decisions by the Federal Circuit, but has in its possession no other objective, independent  
 2 reports or opinions pertaining to any of these patents.

3  
 4 **Interrogatory No. 2.**

5 Identify all past and present officers, board members, employees, and contractors of  
 6 E-PASS, including all E-PASS positions held and all relationships with E-PASS by each  
 7 identified person and the dates during which such position was held.

8  
 9 **Supplemental Objections and Response to Interrogatory No. 2.**

10 Objection, vague and ambiguous, including in regard to terms and phrases such as  
 11 "contractors," and "all relationships." Absent any dispute by Defendant, E-Pass will construe  
 12 the term "contractor" as meaning any contractor involving a contract of \$10,000 or more since  
 13 June 2004. Absent any dispute by Defendant, E-Pass will construe the phrase "all  
 14 relationships" as meaning the title(s) in relation to any officer, board member, or employee of  
 15 E-Pass and, in relation to any contractor, as meaning the general type of contracted services.

16 Objection, overly broad, unduly burdensome, and oppressive. The interrogatory asks  
 17 for the identification of all positions held and all relationships with E-Pass imposing a search for  
 18 information that would be unreasonable under the circumstances and under the Federal Rules  
 19 and applicable case law.

20 Objection, not relevant to any presently ripe claim or defense in this matter, nor  
 21 reasonably calculated to lead to the discovery of admissible evidence. The district court case is  
 22 closed as is its discovery periods. Local Rule 26-2 prohibits parties from propounding  
 23 discovery outside of the discovery period without first obtaining an order of the Court upon a  
 24 showing of good cause or from filing any motion to compel discovery response more than seven  
 25 court days after the discovery cut-off. Additionally, 28 U.S.C. § 1963 prohibits enforcing a  
 26 judgment beyond the district in which the judgment was entered until all appeals have been  
 27 exhausted or until after the time for appeal had lapsed. Seeking post-judgment discovery  
 28 pertains to the judgment and E-Pass has authorized its previous local counsel which resides

1 within this judicial district to produce those documents requested of it.

2 Objection, this interrogatory constitutes at least two (2) subparts since requesting our  
3 client to list off all of its past and present contractors is not logically or factually subsumed  
4 within and necessarily related to the initial question of the identity of all past and present  
5 officers, board members and employees, constituting instead a discrete question and involves a  
6 discrete factual investigation. *See, inter alia, Safeco of America v. Rawstron*, 181 F.R.D. 441,  
7 445 (C.D. Ca. 1998) (holding that subparts are to be counted as one interrogatory if logically or  
8 factually subsumed within and necessarily related to the primary question); and, *Trevino v. ACB*  
9 *American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca. 2006) (holding the same finding multiple  
10 subparts). Objection, the definition of "identify" constitutes a further improper attempt to  
11 circumvent the subpart limitations on interrogatories as discussed in the supplemental objection  
12 and response to Interrogatory No. 1, above.

13 Without waiving the general and specific objections above or previously served, E-Pass  
14 supplements its previous response to this request as follows: Hartmut Hennige is and has been  
15 the president of E-Pass from its formation. Stephen Weiss, Esq., was the secretary and  
16 treasurer of E-Pass from its formation to on or about June 3, 2005. E-Pass has produced as  
17 PJ00686 - PJ00695 its formal corporate filings equally available from the Delaware Secretary  
18 of State, as well as the resignation letters from Mr. Weiss. E-Pass also refers Defendant to  
19 PJ01467 - PJ01518 for checks in excess of \$10,000 since June 2004 and some that precede this  
20 date.

### 21 22 Interrogatory No. 3.

23 Set forth an accounting of all credits and debits to all accounts of E-PASS from the time  
24 the company was founded until present, including the amount of each credit or debit, date,  
25 purpose, and entity that paid or received the credit or debit.

### 26 27 Supplemental Objections and Response to Interrogatory No. 3.

28 Objection, seeks disclosure of confidential business information or otherwise seeks to

1 invade the privacy and financial privacy of any third party. The balancing test favors  
 2 nondisclosure here since, among other things, there is neither present public need nor any  
 3 present interest of Defendant and under 28 U.S.C. § 1963 no such interest will exist until the  
 4 appeal is resolved, and then, only if such resolution is in Defendant's favor.

5 Objection, the interrogatory appears to be designed to harass third parties and interfere  
 6 with their business relationships with E-Pass. In particular, Defendant is prematurely  
 7 attempting to collect on the attorneys' fees award by acquiring any retainer amount that E-Pass  
 8 might have delivered to its appeal counsel in its attempt to appeal this very award.  
 9 Additionally, Defendant has no basis for contending that E-Pass has committed any action that  
 10 might support a piercing the corporate veil, and nevertheless appears intent on performing a  
 11 fishing expedition of E-Pass and anyone and any entity who has any relations to E-Pass.

12 Objection, vague and ambiguous, including in regard to terms and phrases such as  
 13 "purpose." Absent any dispute by Defendant, E-Pass will construe the term "purpose" as  
 14 meaning "financial or monetary benefit." Also, the phrase "entity that paid or received the  
 15 credit or debit" is unduly vague and ambiguous, and absent any dispute from Defendant, E-Pass  
 16 will construe this phrase as meaning any entity that paid any credit to or received any debit  
 17 from E-Pass.

18 Objection, overly broad, unduly burdensome, and oppressive. The interrogatory asks  
 19 for the identification of "all" credits and debits to "all" accounts imposing a search for  
 20 information that would be unreasonable under the circumstances and under the Federal Rules  
 21 and applicable case law.

22 Objection, not relevant to any presently ripe claim or defense in this matter, nor  
 23 reasonably calculated to lead to the discovery of admissible evidence. The district court case is  
 24 closed as is its discovery periods. Local Rule 26-2 prohibits parties from propounding  
 25 discovery outside of the discovery period without first obtaining an order of the Court upon a  
 26 showing of good cause or from filing any motion to compel discovery response more than seven  
 27 court days after the discovery cut-off. Additionally, 28 U.S.C. § 1963 prohibits enforcing a  
 28 judgment beyond the district in which the judgment was entered until all appeals have been

1 exhausted or until after the time for appeal had lapsed. Seeking post-judgment discovery  
 2 pertains to the judgment and E-Pass has authorized its previous local counsel which resides  
 3 within this judicial district to produce those documents requested of it.

4 Objection, this interrogatory constitutes at least two (2) subparts since requesting the  
 5 "purpose" for a credit or debit is not logically subsumed within the initial question of  
 6 accounting for all credits and debits but constitutes a discrete question. *See, inter alia, Safeco*  
 7 *of America v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Ca. 1998) (holding that subparts are to be  
 8 counted as one interrogatory if logically or factually subsumed within and necessarily related to  
 9 the primary question); and, *Trevino v. ACB American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca.  
 10 2006) (holding the same finding multiple subparts).

11 Without waiving the general and specific objections above or previously served, E-Pass  
 12 supplements its previous response to this request as follows: E-Pass received loans from  
 13 Niama-Capital GmbH and Cuatros GmbH, both located in Germany, and has paid attorneys'  
 14 fees to Moses & Singer, E-Pass's district court counsel. E-Pass's documents produced as  
 15 PJ01297 - PJ01298 constitute a list of the loans E-Pass has received. E-Pass's documents  
 16 produced as PJ00001 - PJ000685 and PJ01523 - PJ01531 constitute payments made to E-Pass's  
 17 litigation attorneys. E-Pass's documents produced as PJ01369 - PJ01518 constitute E-Pass's  
 18 corporate checking account records, and individual checks made out to the identified entities.

19  
 20 **Interrogatory No. 4.**

21 Set forth an accounting of E-PASS'S corporate capital on a monthly (or more frequent)  
 22 basis from the time the company was founded until present, including the amount of capital, all  
 23 capital contributions and deductions, consideration given or taken in exchange for contribution  
 24 or deduction, date of every contribution or deduction, identity of contributor or entity receiving  
 25 the deducted capital, and purpose of every contribution or deduction.

1 Supplemental Objections and Response to Interrogatory No. 4.

2 Objection, compound and confusing, posing multiple questions and seeking multiple  
3 answers.

4 Objection, seeks disclosure of confidential business information or otherwise seeks to  
5 invade the privacy and financial privacy of any third party. The balancing test favors  
6 nondisclosure here since, among other things, there is neither present public need nor any  
7 present interest of Defendant and under 28 U.S.C. § 1963 no such interest will exist until the  
8 appeal is resolved, and then, only if such resolution is in Defendant's favor.

9 Objection, vague and ambiguous, including in regard to terms and phrases such as  
10 "consideration," "the deducted capital," and "purpose." Absent any dispute by Defendant,  
11 E-Pass will construe the terms "consideration" and "purpose" as meaning "financial or  
12 monetary benefit." Absent any dispute by Defendant, E-Pass will construe the phrase "the  
13 deducted capital" as meaning the capital that was transferred from E-Pass.

14 Objection, overly broad, unduly burdensome, and oppressive. The interrogatory asks  
15 for the identification of "all" capital contributions and deductions and "every" contribution or  
16 deduction imposing a search for information that would be unreasonable under the  
17 circumstances and under the Federal Rules and applicable case law.

18 Objection, not relevant to any presently ripe claim or defense in this matter, nor  
19 reasonably calculated to lead to the discovery of admissible evidence. The district court case is  
20 closed as is its discovery periods. Local Rule 26-2 prohibits parties from propounding  
21 discovery outside of the discovery period without first obtaining an order of the Court upon a  
22 showing of good cause or from filing any motion to compel discovery response more than seven  
23 court days after the discovery cut-off. Additionally, 28 U.S.C. § 1963 prohibits enforcing a  
24 judgment beyond the district in which the judgment was entered until all appeals have been  
25 exhausted or until after the time for appeal had lapsed. Seeking post-judgment discovery  
26 pertains to the judgment and E-Pass has authorized its previous local counsel which resides  
27 within this judicial district to produce those documents requested of it.  
28



1 Objection, this interrogatory constitutes at least three (3) subparts because requesting  
 2 "all capital contributions and deductions" is not logically subsumed within the initial request for  
 3 a monthly accounting of E-Pass's corporate capital and requesting the "purpose" for each  
 4 contribution or deduction is yet another discrete question not logically subsumed within this  
 5 initial request. *See, inter alia, Safeco of America v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Ca.  
 6 1998) (holding that subparts are to be counted as one interrogatory if logically or factually  
 7 subsumed within and necessarily related to the primary question); and, *Trevino v. ACB*  
 8 *American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca. 2006) (holding the same finding multiple  
 9 subparts).

10 Without waiving the general and specific objections above or previously served, E-Pass  
 11 supplements its previous response to this request as follows: E-Pass received loans from  
 12 Niama-Capital GmbH and Cuatros GmbH, both located in Germany. E-Pass's documents  
 13 produced as PJ01297 - PJ01298 constitute a list of the loans E-Pass has received. E-Pass's  
 14 documents produced as PJ01295 - PJ01296 and PJ01520 - PJ01522 constitute a list of its  
 15 shareholders.

16  
 17 E-Pass received funding from each of its shareholders in the amount of \$1 per share,  
 18 other than Mr. Hennige who instead provided his services and his patented technology in  
 19 exchange for his shares of E-Pass. E-Pass's documents produced as PJ00001 - PJ000685 and  
 20 PJ01523 - PJ01531 constitute payments made to E-Pass's litigation attorneys. E-Pass's  
 21 documents produced as PJ01369 - PJ01518 constitute E-Pass's corporate checking account  
 22 records, and individual checks made out to the identified entities.

23  
 24 **Interrogatory No. 5.**

25 Identify all past and present owners of any interest in E-PASS and entities to which any  
 26 ownership interest in E-PASS has ever been pledged, including the amount and type of  
 27 ownership, amount and type of interest pledged, dates of ownership or pledge, and  
 28 consideration given for the ownership interest or pledge.



**Supplemental Objections and Response to Interrogatory No. 5.**

Objection, seeks disclosure of confidential business information or otherwise seeks to invade the privacy and financial privacy of any third party. The balancing test favors nondisclosure here since, among other things, there is neither present public need nor any present interest of Defendant and under 28 U.S.C. § 1963 no such interest will exist until the appeal is resolved, and then, only if such resolution is in Defendant's favor.

Objection, vague and ambiguous, including in regard to terms and phrases such as "interest," "pledged," "type," and "consideration." Absent any dispute by Defendant, E-Pass will construe the term "interest" as meaning an ownership interest in E-Pass. Absent any dispute by Defendant, E-Pass will construe the term "pledged" as meaning a formal written pledge. Absent any dispute by Defendant, E-Pass will construe the term "type" as meaning an objective, formal category of ownership interest or pledged interest maintained in E-Pass's usual course of business. Absent any dispute by Defendant, E-Pass will construe the term "consideration" as meaning "financial or monetary benefit."

Objection, vague and indefinite as to time.

Objection, overly broad, unduly burdensome, and oppressive. The interrogatory asks for the identification of "all" past and present owners of "any" interest in E-Pass imposing a search for information that would be unreasonable under the circumstances and under the Federal Rules and applicable case law.

Objection, not relevant to any presently ripe claim or defense in this matter, nor reasonably calculated to lead to the discovery of admissible evidence. The district court case is closed as is its discovery periods. Local Rule 26-2 prohibits parties from propounding discovery outside of the discovery period without first obtaining an order of the Court upon a showing of good cause or from filing any motion to compel discovery response more than seven court days after the discovery cut-off. Additionally, 28 U.S.C. § 1963 prohibits enforcing a judgment beyond the district in which the judgment was entered until all appeals have been exhausted or until after the time for appeal had lapsed. Seeking post-judgment discovery

1 pertains to the judgment and E-Pass has authorized its previous local counsel which resides  
2 within this judicial district to produce those documents requested of it.

3 Objection, this interrogatory constitutes at least four (4) subparts because the question as  
4 it pertains to "entities to which . . . E-Pass has ever . . . pledged" an ownership interest is not  
5 logically subsumed within the initial request pertaining to current "owners of any interest."  
6 Furthermore, requesting E-Pass to identify the consideration given for the ownership interest or  
7 pledge is yet another discrete question not logically subsumed within either of the foregoing  
8 separate questions. *See, inter alia, Safeco of America v. Rawstron*, 181 F.R.D. 441, 445 (C.D.  
9 Ca. 1998) (holding that subparts are to be counted as one interrogatory if logically or factually  
10 subsumed within and necessarily related to the primary question); and, *Trevino v. ACB*  
11 *American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca. 2006) (holding the same finding multiple  
12 subparts). Objection, the definition of "identify" constitutes a further improper attempt to  
13 circumvent the subpart limitations on interrogatories as discussed in the supplemental objection  
14 and response to Interrogatory No. 1, above.

15 Without waiving the general and specific objections above or previously served, E-Pass  
16 supplements its previous response to this request as follows: E-Pass's documents produced as  
17 PJ01295 - PJ01296 and PJ01520 - PJ01522 constitute a list of its shareholders.

#### 18 Interrogatory No. 6.

19 Identify all entities who have ever satisfied in full or in part any debt or other obligation  
20 of E-PASS and the specifics of any such transaction, including the date, amount of debt or  
21 obligation, amount of the debt or other obligation satisfied, entities satisfying the debt or  
22 obligation, and all reasons for the entities' satisfaction of the debt or obligation.  
23

#### 24 Supplemental Objections and Response to Interrogatory No. 6.

25 Objection, seeks disclosure of confidential business information or otherwise seeks to  
26 invade the privacy and financial privacy of any third party. The balancing test favors  
27 nondisclosure here since, among other things, there is neither present public need nor any  
28

1 present interest of Defendant and under 28 U.S.C. § 1963 no such interest will exist until the  
2 appeal is resolved, and then, only if such resolution is in Defendant's favor.

3 Objection, seeks disclosure of confidential business information or otherwise seeks to  
4 invade the privacy and financial privacy of any third party. The balancing test favors  
5 nondisclosure here since, among other things, there is no present public need nor any present  
6 interest of Defendant and will not be under 28 U.S.C. § 1963 until the appeal is resolved and  
7 unless after such resolution Defendant has a money judgment to enforce.

8 Objection, the interrogatory appears to be designed to harass third parties and interfere  
9 with their business relationships with E-Pass. In particular, Defendant is prematurely  
10 attempting to collect on the attorneys' fees award by acquiring any retainer amount that E-Pass  
11 might have delivered to its appeal counsel in its attempt to appeal this very award.  
12 Additionally, Defendant has no basis for contending that E-Pass has committed any action that  
13 might support a piercing the corporate veil, and nevertheless appears intent on performing a  
14 fishing expedition of E-Pass and anyone and any entity who has any relations to E-Pass.

15 Objection, vague and ambiguous, including in regard to terms and phrases such as  
16 "obligation," "the specifics of any such transaction, including," and "all reasons for." Absent  
17 any dispute by Defendant, E-Pass will construe the term "obligation" as meaning a formal  
18 written demand for money owed by E-Pass that E-Pass received in its usual course of business.  
19 Absent any dispute by Defendant, E-Pass will construe the phrase "all reasons for" as meaning  
20 "all financial or monetary benefits." Absent any dispute by Defendant, E-Pass will construe  
21 the phrase "the specifics of any such transaction, including" as superfluous of the surrounding  
22 words and meaning only "and [] the date, amount of debt or obligation, amount of the debt or  
23 other obligation satisfied, entities satisfying the debt or obligation, and" any one benefit  
24 received or expected in exchange for the satisfaction of the debt or obligation.

25 Objection, overly broad, unduly burdensome, and oppressive. The interrogatory asks  
26 for the identification of "all" entities who have ever satisfied E-Pass' obligations imposing a  
27 search for information that would be unreasonable under the circumstances and under the  
28 Federal Rules and applicable case law.

1 Objection, not relevant to any presently ripe claim or defense in this matter, nor  
 2 reasonably calculated to lead to the discovery of admissible evidence. The district court case is  
 3 closed as is its discovery periods. Local Rule 26-2 prohibits parties from propounding  
 4 discovery outside of the discovery period without first obtaining an order of the Court upon a  
 5 showing of good cause or from filing any motion to compel discovery response more than seven  
 6 court days after the discovery cut-off. Additionally, 28 U.S.C. § 1963 prohibits enforcing a  
 7 judgment beyond the district in which the judgment was entered until all appeals have been  
 8 exhausted or until after the time for appeal had lapsed. Seeking post-judgment discovery  
 9 pertains to the judgment and E-Pass has authorized its previous local counsel which resides  
 10 within this judicial district to produce those documents requested of it.

11 Objection, this interrogatory constitutes at least three (3) subparts since requesting the  
 12 “amount of [a] debt or obligation” is a distinct question not subsumed within the initial question  
 13 which requested the identity of “all entities who have ever satisfied in full or in part any debt or  
 14 other obligation.” Furthermore, both of these questions are also logically and factually distinct  
 15 questions from requesting “all reasons for the entities’ satisfaction of the debt or obligation,” to  
 16 the minimal extent that this last phrase may be understood. *See, inter alia, Safeco of America*  
 17 *v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Ca. 1998) (holding that subparts are to be counted as  
 18 one interrogatory if logically or factually subsumed within and necessarily related to the  
 19 primary question); and, *Trevino v. ACB American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca. 2006)  
 20 (holding the same finding multiple subparts). Objection, the definition of “identify” constitutes  
 21 a further improper attempt to circumvent the subpart limitations on interrogatories as discussed  
 22 in the supplemental objection and response to Interrogatory No. 1, above.

23 Without waiving the general and specific objections above or previously served, E-Pass  
 24 supplements its previous response to this request as follows: E-Pass received loans from  
 25 Niama-Capital GmbH and Cuatros GmbH, both located in Germany. E-Pass’s documents  
 26 produced as PJ01297 - PJ01298 constitute a list of the loans E-Pass has received, and E-Pass’s  
 27 documents produced as PJ01295 - PJ01296 and PJ01520 - PJ01522 constitute a list of its  
 28 shareholders:

1 E-Pass received funding from each of its shareholders in the amount of \$1 per share,  
 2 other than Mr. Hennige who instead provided his services and his patented technology in  
 3 exchange for his shares of E-Pass.

4 **Interrogatory No. 7.**

5 Separately for each of ACCESS's post-judgment interrogatories, identify each person  
 6 who and all documents that supplied factual information used in preparing any of the responses  
 7 to the interrogatories.

8  
 9 **Supplemental Objections and Response to Interrogatory No. 7.**

10 Objection, this interrogatory constitutes at least thirty-two (32) subparts since it asks two  
 11 separate and discrete subpart questions (namely, requesting E-Pass first to identify "each person  
 12 who . . . supplied factual information" and second to identify "all documents that supplied  
 13 factual information") in regards to each of the foregoing interrogatories, which in total had  
 14 sixteen subparts among them. *Safeco of America*, 181 F.R.D. at 446 (interrogatory  
 15 incorporating by reference 50 requests for admissions constituted 50 discrete subparts), and at  
 16 445 (holding that subparts are to be counted as one interrogatory if logically or factually  
 17 subsumed within and necessarily related to the primary question); and, *Trevino v. ACB*  
 18 *American, Inc.*, 232 F.R.D. 612, 614 (N.D. Ca. 2006) (holding the same finding multiple  
 19 subparts). Objection, the definition of "identify" constitutes a further improper attempt to  
 20 circumvent the subpart limitations on interrogatories as discussed in objection to Interrogatory  
 21 No. 1, above.

22 To the extent incorporates a previous interrogatory, E-Pass likewise incorporates its  
 23 objections to the previous interrogatory.

24 Objection, seeks information protected by the attorney work product immunity.

25  
 26 ///

27 ///

28 ///

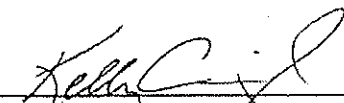
1 Without waiving the general and specific objections above or previously served, E-Pass  
 2 supplements its response to this request as follows: Hartmut Hennige, Peter Reisser, Squire  
 3 Sanders & Dempsey LLP, and Moses & Singer LLP, and supplied factual information used in  
 4 preparing the foregoing supplemental responses to Defendant's interrogatories. Documents that  
 5 supplied factual information include E-Pass's corporate formation and state filing documents, E-  
 6 Pass's checking account records, attorney invoices, the client files from Squire Sanders &  
 7 Dempsey LLP, expert reports from Moses & Singer LLP, and certain papers copied from the  
 8 records of the related action against Microsoft and Compaq.

9  
 10 Respectfully submitted,

11 CISLO & THOMAS LLP

12  
 13 Dated: May 19, 2008

14 By:

15   
 16 Daniel M. Cislo, Esq.  
 17 Kelly W. Cunningham, Esq.

18 Attorneys for Plaintiff  
 19 E-PASS TECHNOLOGIES, INC.

20 T:\08-20696\E-Pass' suppl response to post-judgment interrogatories by PalmSource.DOC  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

CISLO & THOMAS LLP

Santa Monica, California

1333 2ND STREET

SUITE 500

SANTA MONICA, CALIFORNIA 90401-4110

TELEPHONE: (310) 450-0647

FACSIMILE: (310) 394-4477

**VERIFICATION**

I have read the foregoing document, PLAINTIFF E-PASS TECHNOLOGIES, INC.'S SUPPLEMENTAL RESPONSES TO DEFENDANT ACCESS SYSTEMS AMERICAS, INC.'S FIRST SET OF POST-JUDGMENT INTERROGATORIES, and know its contents.

I am President of E-PASS TECHNOLOGIES, INC., the Plaintiff in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

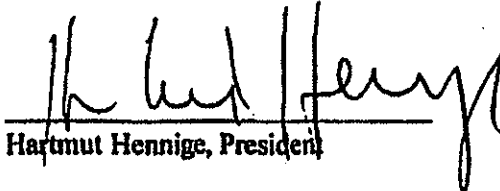
I am informed and believe and on that ground allege that the supplemental responses in the foregoing document are true and correct.

The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of May, 2008 at Liver Elca  
City/Country

E-PASS TECHNOLOGIES, INC.

  
Hartmut Hennige, President



PROOF OF SERVICE

I am over the age of eighteen (18) years, employed in the County of Los Angeles, and not a party to the above-entitled action. My business address is 1333 2nd Street, Suite 500, Santa Monica, California 90401-4110.

On Monday, May 19, 2008, I served:

**PLAINTIFF E-PASS TECHNOLOGIES, INC.'S SUPPLEMENTAL RESPONSES TO  
DEFENDANT ACCESS SYSTEMS AMERICAS, INC.'S FIRST SET OF POST-  
JUDGMENT INTERROGATORIES**

by email transmission and by Federal Express to the following addressees:

M. Elizabeth Day, Esq.  
Vincent Lam, Esq.  
DLA PIPER RUDNICK GRAY CARY LLP  
2000 University Avenue  
East Palo Alto, California 94303-2248  
Email: elizabeth.day@dlapiper.com  
vincent.lam@dlapiper.com

Madison C. Jellins, Esq.  
Julie J. Han, Esq.  
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Palo Alto, California 94301  
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jjhan@townsend.com

and

Attorneys for  
Defendant VISA INC. (formerly VISA  
INTERNATIONAL SERVICE ASSOCIATION and  
VISA USA, INC.)

John Allcock, Esq.  
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Mark D. Rowland, Esq.  
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525 University Avenue  
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Email: mark.rowland@ropesgray.com  
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Attorneys for  
Defendants 3COM, INC., PALM, INC.,  
PALMONE, INC., and HANDSPRING, INC.

Attorneys for  
Defendant ACCESS SYSTEMS AMERICAS, INC.  
(formerly PALMSOURCE, INC.)

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on Monday, May 19, 2008, at Santa Monica, California.



Christopher Eckart

EXHIBIT 26



PROCUREMENT AND ENFORCEMENT  
OF INTELLECTUAL PROPERTY

4300 LONG BEACH BLVD.  
SUITE 408  
LONG BEACH, CA 90807-2008  
(562) 595-8422

CISLO & THOMAS LLP

*Attorneys at Law*

1333 2ND STREET  
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PATENT, TRADEMARK  
COPYRIGHT & RELATED MATTERS

2829 TOWNBOATE ROAD  
SUITE 310  
WESTLAKE VILLAGE, CA 91361-3008  
(805) 496-1164

March 27, 2008

**VIA EMAIL AND FEDERAL EXPRESS**

EMAIL ADDRESS: andrew.oliver@ropesgray.com

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
525 University Avenue  
Palo Alto, California 94301

Re: **E-Pass Technologies, Inc. v. 3Com Corp. et al. and Related District  
Court Actions (Our Ref.: 08-20696)**

Dear Mr. Oliver:

Even though we continue to consider your post-judgment discovery requests improper and premature for the number of grounds that we have identified in our meet and confer and reasserted in our two letters following our meet and confer, in an effort to provide you with responsive documents as soon as possible, we enclose by Federal Express responsive documents that we are able to provide you today. You will notice that many of them are stamped, "Highly Confidential - For Attorney's Eyes Only" and we trust that you will treat them accordingly under the operative protective order.

We of course reserve the right to supplement this document production upon receipt of any additional responsive documents. As we mentioned in our earlier letters that precede your motion to compel, we also have supplemental responses to your interrogatories, and we are awaiting verification of the supplemental responses from our client. We should be getting these to you very shortly. We are also in the process of completing the supplemental responses to your document requests, which, again, we had assured you we were preparing before you file your motion to compel. We had to revise these supplemental responses as a result of our authorization to produce

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

CISLO & THOMAS LLP  
*Attorneys at Law*

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
March 27, 2008  
Page 2

the enclosed responsive documents and our client's supplemental response to your interrogatories -- even though your post-judgment discovery requests were, among other things, improper and premature for the number of grounds that we have previously identified. We nevertheless are producing these documents in good faith and despite these valid grounds for objection.

You will notice from just the enclosed attorney invoices, which presently amount to only roughly half of the total number of attorney invoices for this and the *Microsoft* litigation, that E-Pass paid its attorneys in excess of \$6.7 million in attorneys fees and costs in this and the *Microsoft* litigation. We assure you that we have requested the remaining attorney invoices from Moses & Singer, and we hope to receive them shortly. We also assure you that we expect to obtain a copy of E-Pass's corporate formation documents from a third party, which apparently is not Mr. Weiss's firm, and we will produce this to you as well as soon as we have had an opportunity to review them for any privileged material.

We therefore request that you withdraw your motion to compel and work with us on what other documents and information you will be demanding in light of the enclosed documents.

Meanwhile, if you should have any questions or comments regarding these matters, do not hesitate to contact our office.

Very truly yours,

CISLO & THOMAS LLP

  
Kelly W. Cunningham

KWC:ce

Enclosures (via Federal Express only)

E-Pass Post-Judgment Document Production, Bates Nos. PJ00001 - PJ00720

**EXHIBIT 27**

Daniel M. Cislo, Esq., No. 125,378  
Kelly W. Cunningham, Esq., No. 186,229  
CISLO & THOMAS LLP  
1333 2nd Street, Suite 500  
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Telephone: (310) 451-0647  
Telefax: (310) 394-4477  
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kcunningham@cislo.com

Attorneys for Plaintiff  
E-PASS TECHNOLOGIES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

vs.

3COM CORP. AND PALM, INC.,

Defendants.

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

vs.

VISA INTERNATIONAL SERVICE  
ASSOCIATION and VISA U.S.A., INC.,

Defendants.

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

vs.

PALMONE, INC., PALMSOURCE, INC.  
AND HANDSPRING, INC.,

Defendants.

) CASE NO. C-00-2255 DLJ

) CASE NO. C-03-4747 DLJ

) CASE NO. C-04-0528 DLJ

) Related Cases

) PLAINTIFF E-PASS TECHNOLOGIES,  
) INC.'S SECOND SUPPLEMENTAL  
) RESPONSES TO DEFENDANT ACCESS  
) SYSTEMS AMERICAS, INC.'S FIRST  
) SET OF POST-JUDGMENT  
) INTERROGATORIES

1 PROPOUNDING PARTY: DEFENDANT ACCESS SYSTEMS AMERICAS, INC.  
 2 (formerly PALMSOURCE, INC.)

3 RESPONDING PARTY: PLAINTIFF E-PASS TECHNOLOGIES, INC.

4 SET NUMBER: ONE (1)  
 5

6 In an abundance of caution, Plaintiff E-PASS TECHNOLOGIES, INC.'s ("E-Pass")  
 7 hereby further supplements its responses to Defendant ACCESS SYSTEMS AMERICAS,  
 8 INC.'S, formerly PALMSOURCE, INC., ("Defendant") First Set of Post-Judgment  
 9 Interrogatories. E-Pass hereby incorporates by this reference all of the definitions, objections  
 10 and responses contained in its supplemental responses to these interrogatories.  
 11

12 **SECOND SUPPLEMENTAL RESPONSES TO FIRST SET OF INTERROGATORIES**  
 13

14 **Interrogatory No. 1.**

15 Identify every asset of E-PASS, including the type of asset, value of the asset, location  
 16 of the asset, and custodian of the asset, including all account numbers and financial institution  
 17 identifying information.  
 18

19 **Second Supplemental Response to Interrogatory No. 1.**

20 Without waiving E-Pass's previously served general and specific objections, E-Pass  
 21 further supplements its previous response to this interrogatory as follows: E-Pass has no assets  
 22 anywhere in the world except the capital in its two Citibank accounts (one savings account and  
 23 one checking account) and its intellectual property, including U.S. Patent No. 5,276,311 and  
 24 the other patents owned by E-Pass issued from other countries as listed in the report from  
 25 David Musker and Stephen Groom, which E-Pass has produced as PJ01270 - PJ01292. E-Pass  
 26 presently has no objective, independent valuation of this patent, but has produced as PJ00721 -  
 27 PJ01294 a report from David Musker and Stephen Groom pertaining to certain of these patents;  
 28 separate expert reports from Walter Bratic, Thomas La Porta, R. Polk Wagner, and Joseph P.



Francini; a portion of an expert report of James B. Gambrell; and a memorandum of understanding from Michael Cooper. E-Pass also refers Defendant to the January 12, 2007 and May 2, 2007 decisions by the Federal Circuit, but has in its possession no other objective, independent reports or opinions pertaining to any of these patents. As for a record of E-Pass's corporate capital, E-Pass has produced as PJ01300 - PJ01518 a copy of each bank Citibank checking and savings account statement that it has in its possession.

**Interrogatory No. 2.**

Identify all past and present officers, board members, employees, and contractors of E-PASS, including all E-PASS positions held and all relationships with E-PASS by each identified person and the dates during which such position was held.

**Second Supplemental Response to Interrogatory No. 2.**

Without waiving E-Pass's previously served general and specific objections, E-Pass further supplements its previous response to this interrogatory as follows: Hartmut Hennige is and has been the president of E-Pass from its formation, and Peter Reisser and Thomas Reisser are and have been vice-presidents of E-Pass since around July 7, 2004. Stephen Weiss, Esq., was the secretary and treasurer of E-Pass from its formation to around June 3, 2005 and June 24, 2005, respectively. E-Pass has never had any employees. E-Pass has produced as PJ00686 - PJ00695, PJ01519, and PJ01532 its formal corporate papers. E-Pass has also produced as PJ01467 - PJ01518 a copy of each check in its possession in excess of \$10,000 since June 2004 and some that precede this date.

**Interrogatory No. 3.**

Set forth an accounting of all credits and debits to all accounts of E-PASS from the time the company was founded until present, including the amount of each credit or debit, date, purpose, and entity that paid or received the credit or debit.

**Second Supplemental Response to Interrogatory No. 3.**

Without waiving E-Pass's previously served general and specific objections, E-Pass further supplements its previous response to this interrogatory as follows: E-Pass received loans from Niama-Capital GmbH and Cuatros GmbH, both located in Germany, and has paid attorneys' fees to Moses & Singer, E-Pass's district court counsel. E-Pass's documents produced as PJ01297 - PJ01298 constitute a list of the loans E-Pass had received as of December 31, 2007, and E-Pass's documents produced as PJ01533 - PJ01534 and PJ01541 constitute E-Pass's documents related to all loans E-Pass has received after that date. E-Pass's documents produced as PJ00001 - PJ000685, PJ01523 - PJ01531, PJ01533 - PJ01535, and PJ01542 constitute E-Pass's documents related to payments made to E-Pass's litigation attorneys. As for a record of E-Pass's corporate capital, E-Pass produced as PJ01300 - PJ01518 a copy of each bank Citibank checking and savings account statement that it has in its possession as well as each individual check.

E-Pass has no subscription agreements in its possession. E-Pass is informed and believes that all such agreements were maintained by Stephen Weiss, Esq., first as E-Pass's secretary, and later as E-Pass's patent litigation counsel for discovery purposes. E-Pass is also informed and believes that all such agreements have already been produced in response to previous discovery requests. E-Pass has requested Mr. Weiss to produce all responsive documents either back to E-Pass or directly to Andrew Oliver, Esq. E-Pass has received no documents from Moses & Singer LLP in response to these requests. Mr. Weiss indicated that some or all of the requested documents might be with Mandel & Mandel, and as a result E-Pass has requested Mandel & Mandel to produce to E-Pass all responsive documents. E-Pass has received no documents from Mandel & Mandel in response to these requests.

1 **Interrogatory No. 4.**

2 Set forth an accounting of E-PASS'S corporate capital on a monthly (or more frequent)  
3 basis from the time the company was founded until present, including the amount of capital, all  
4 capital contributions and deductions, consideration given or taken in exchange for contribution  
5 or deduction, date of every contribution or deduction, identity of contributor or entity receiving  
6 the deducted capital, and purpose of every contribution or deduction.

7  
8 **Second Supplemental Response to Interrogatory No. 4.**

9 Without waiving E-Pass's previously served general and specific objections, E-Pass  
10 further supplements its previous response to this interrogatory as follows: E-Pass received  
11 loans from Niama-Capital GmbH and Cuatros GmbH, both located in Germany. E-Pass's  
12 documents produced as PJ01297 - PJ01298 constitute a list of the loans E-Pass had received as  
13 of December 31, 2007, and E-Pass's documents produced as PJ01533 - PJ01534 and PJ01541  
14 constitute E-Pass's documents related to all loans E-Pass has received after that date. E-Pass's  
15 documents produced as PJ01295 - PJ01296 and PJ01520 - PJ01522 constitute a list of its  
16 shareholders. E-Pass received funding from each of its shareholders in the amount of \$1 per  
17 share, other than Mr. Hennige who instead provided his services and his patented technology in  
18 exchange for his shares of E-Pass.

19  
20 E-Pass's documents produced as PJ01300 - PJ01518 constitute a copy of each bank  
21 Citibank checking and savings account statement that it has in its possession as well as each  
22 individual check. E-Pass's documents produced as PJ00001 - PJ000685, PJ01523 - PJ01531,  
23 PJ01533 - PJ01535, and PJ01542 constitute E-Pass's documents related to payments made to  
24 E-Pass's litigation attorneys.

**Interrogatory No. 5.**

Identify all past and present owners of any interest in E-PASS and entities to which any ownership interest in E-PASS has ever been pledged, including the amount and type of ownership, amount and type of interest pledged, dates of ownership or pledge, and consideration given for the ownership interest or pledge.

**Second Supplemental Response to Interrogatory No. 5.**

Without waiving E-Pass's previously served general and specific objections, E-Pass further supplements its previous response to this interrogatory as follows: E-Pass's documents produced as PJ01295 - PJ01296 and PJ01520 - PJ01522 constitute a list of its shareholders. E-Pass has requested additional information concerning those shareholders that it does not have contact information, and obtained some additional information which was incorporated in these produced documents. Two requests, however, have not yet been answered. E-Pass will supplement this contact information as soon as it receives any additional information.

Some additional contact information is contained on the subscription agreements already produced. As mentioned above, E-Pass has no subscription agreements in its possession. E-Pass is informed and believes that all such agreements were maintained by Stephen Weiss, Esq., first as E-Pass's secretary, and later as E-Pass's patent litigation counsel for discovery purposes. E-Pass is also informed and believes that all such agreements have already been produced in response to previous discovery requests. E-Pass has requested Mr. Weiss to produce all responsive documents either back to E-Pass or directly to Andrew Oliver, Esq. E-Pass has received no documents from Moses & Singer LLP in response to these requests. Mr. Weiss indicated that some or all of the requested documents might be with Mandel & Mandel, and as a result E-Pass has requested Mandel & Mandel to produce to E-Pass all responsive documents. E-Pass has received no documents from Mandel & Mandel in response to these requests.

**Interrogatory No. 6.**

Identify all entities who have ever satisfied in full or in part any debt or other obligation of E-PASS and the specifics of any such transaction, including the date, amount of debt or obligation, amount of the debt or other obligation satisfied, entities satisfying the debt or obligation, and all reasons for the entities' satisfaction of the debt or obligation.

**Second Supplemental Response to Interrogatory No. 6.**

Without waiving E-Pass's previously served general and specific objections, E-Pass further supplements its previous response to this interrogatory as follows: E-Pass received loans from Niama-Capital GmbH and Cuatros GmbH, both located in Germany. E-Pass's documents produced as PJ01297 - PJ01298 constitute a list of the loans E-Pass had received as of December 31, 2007, and E-Pass's documents produced as PJ01533 - PJ01534 and PJ01541 constitute E-Pass's documents related to all loans E-Pass has received after that date. E-Pass's documents produced as PJ01295 - PJ01296 and PJ01520 - PJ01522 constitute a list of its shareholders. E-Pass received funding from each of its shareholders in the amount of \$1 per share, other than Mr. Hennige who instead provided his services and his patented technology in exchange for his shares of E-Pass.

**Interrogatory No. 7.**

Separately for each of ACCESS's post-judgment interrogatories, identify each person who and all documents that supplied factual information used in preparing any of the responses to the interrogatories.

**Second Supplemental Response to Interrogatory No. 7.**

Without waiving E-Pass's previously served general and specific objections, E-Pass further supplements its response to this interrogatory as follows: Hartmut Hennige, Peter Reisser, Squire Sanders & Dempsey LLP, and Moses & Singer LLP, and supplied factual information used in preparing the foregoing supplemental responses to Defendant's

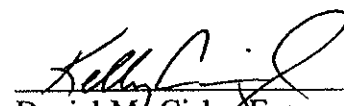
1 interrogatories. Andrew Oliver, Esq. supplied the factual information that his law firm has  
2 received copies of E-Pass's subscription agreements. Documents that supplied factual  
3 information include E-Pass's corporate formation and state filing documents, E-Pass's checking  
4 account records, attorney invoices, the client files from Squire Sanders & Dempsey LLP,  
5 expert reports from Moses & Singer LLP, and certain papers copied from the records of the  
6 related action against Microsoft and Compaq.

7  
8 Respectfully submitted,

9 CISLO & THOMAS LLP

10  
11 Dated: June 13, 2008

By:

  
Daniel M. Cislo, Esq.

Kelly W. Cunningham, Esq.

12  
13 Attorneys for Plaintiff  
14 E-PASS TECHNOLOGIES, INC.

15 T:\08-20696\E-Pass' second suppl response to post-judgment interrogatories by PalmSource.DOC  
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CISLO & THOMAS LLP

*Attorneys at Law*

1333 2ND STREET

SUITE 500

SANTA MONICA, CALIFORNIA 90401-4110

TELEPHONE: (310) 450-0847

FACSIMILE: (310) 394-4477

**PROOF OF SERVICE**

I am over the age of eighteen (18) years, employed in the County of Los Angeles, and not a party to the above-entitled action. My business address is 1333 2nd Street, Suite 500, Santa Monica, California 90401-4110.

On Friday, June 13, 2008, I served:

**PLAINTIFF E-PASS TECHNOLOGIES, INC.'S SECOND SUPPLEMENTAL  
RESPONSES TO DEFENDANT ACCESS SYSTEMS AMERICAS, INC.'S FIRST  
SET OF POST-JUDGMENT INTERROGATORIES**

by email transmission and by United States First Class Mail to the following addressees:

Mark D. Rowland, Esq.  
Andrew T. Oliver, Esq.  
ROPES & GRAY LLP  
525 University Avenue  
Palo Alto, California 94301-1903  
Email: mark.rowland@ropesgray.com  
andrew.oliver@ropesgray.com

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on Friday, June 13, 2008, at Santa Monica, California.

  
Christopher Eckart



**EXHIBIT 28**

---

**From:** Oliver, Andrew T.  
**Sent:** Monday, June 02, 2008 5:09 PM  
**To:** 'dancislo@cislo.com'; 'Kelly Cunningham'  
**Cc:** Rowland, Mark D.; Palo Alto E-Files  
**Subject:** E-Pass v palmOne et al: request for meet and confer

Dear Dan and Kelly,

Further to my conversation with Kelly on Thursday May 29, ACCESS is considering filing a motion for sanctions against both E-Pass and your law firm. ACCESS is considering seeking the expenses mandated by Rule 37(a)(5).

Further, I listed for Kelly examples of several deficiencies in the discovery ordered by the court, and requested that they be cured. These deficiencies include, but are not limited to a failure to provide the ordered accounting of E-Pass assets (including the failure to identify the location of several million dollars of assets), a failure to provide ownership information, identifying information, and possibly subscription agreements for E-Pass' shareholders and those who have pledged capital to E-Pass, a failure to identify the business purpose of large payments to a "June Hennige" (including the reasons why such payments have regularly been made after the corporation was dissolved in 2004), a failure to identify the accounts that E-Pass holds with foreign banking entities and related documentation, etc. Due to at least these failures, ACCESS is also investigating the possibility of seeking contempt sanctions pursuant to Rule 37(b)(2).

We would like to meet and confer regarding whether the expenses will be paid and whether the discovery violations will be promptly remedied without the need to involve the court. Are you available to discuss these issues either late in the morning or early in the afternoon on Tuesday? If not, please propose a time within the next couple of days at which we can meet regarding these issues.

Sincerely,  
Andrew

**EXHIBIT 29**



PROCUREMENT AND ENFORCEMENT  
OF INTELLECTUAL PROPERTY

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CISLO & THOMAS LLP

*Attorneys at Law*

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(805) 496-1164

June 3, 2008

**VIA EMAIL TRANSMISSION**

EMAIL ADDRESS: [andrew.oliver@ropesgray.com](mailto:andrew.oliver@ropesgray.com)

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
525 University Avenue  
Palo Alto, California 94301

**Re: *E-Pass Technologies, Inc. v. 3Com Corp. et al.***  
**Civil Case No. 00-CV-2255 DLJ and Related Matters (08-20696)**

Dear Mr. Oliver:

We are in receipt of your June 2, 2008 email requesting a meet and confer on your intended motion for sanctions and motion for contempt order. We vehemently disagree with these motions and strongly request that you not pursue them.

We always, however, wish to seek ways to avoid motion practice and satisfy your discovery requests to the extent that it is within our abilities and within the actual requests. To this end, we propose meeting by telephone this Thursday or Friday afternoon at around 3:30 pm.

We would also like to include in this meet and confer our intention to seek sanctions against your firm for these improper motions, which verge on a violation of your ethical duties as officers of the Court.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

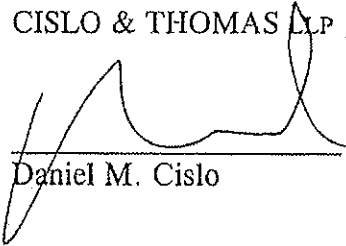
CISLO & THOMAS LLP  
*Attorneys at Law*

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
June 3, 2008  
Page 2

Meanwhile, if you should have any questions or comments regarding this matter, do not hesitate to contact our office.

Very truly yours,

CISLO & THOMAS LLP

A handwritten signature in black ink, appearing to read 'Daniel M. Cislo', is written over a horizontal line. The signature is stylized with a large initial 'D' and a prominent loop at the end.

DMC/KWC:ce

T:\03-20090\Letter to Oliver re meet and confer re motions for sanctions.DOC

**EXHIBIT 30**

**Oliver, Andrew T.**

---

**From:** Oliver, Andrew T.  
**Sent:** Wednesday, June 04, 2008 3:12 PM  
**To:** 'dancislo@cislo.com'; 'Kelly Cunningham'  
**Cc:** 'Chris Eckart'; Rowland, Mark D.; Palo Alto E-Files  
**Subject:** E-Pass v palmOne et al: meet and confer

Counsel,

I write in response to your letter sent today. We have acted properly and are aware of no basis for a motion against us. Thus, we would like to know the legal and factual grounds upon which you would base any potential motion for sanctions. We do not think that it will be a profitable use of time to meet and confer without having had an opportunity to consider your allegations. In each instance in which we have brought a motion, we have afforded you multiple days to consider the issues that to be raised at a meet and confer. Please provide your basis for a motion as soon as possible. We will be prepared to schedule a meet and confer at a reasonable time after receiving your allegations. If you are not willing to provide your factual and legal support before a meet and confer, please inform us. Because, even if you refuse to provide a reasonable opportunity to consider your allegations, we will be willing to meet and confer so as to fulfill our obligations under the local rules.

We will be glad to meet and confer about ACCESS' potential motion(s) on Thursday at 3:30pm. I will plan to call your offices at that time.

Sincerely,  
Andrew

---

**From:** Chris Eckart [mailto:ceckart@cislo.com]  
**Sent:** Tuesday, June 03, 2008 7:08 PM  
**To:** Oliver, Andrew T.  
**Cc:** dancislo@cislo.com; 'Kelly Cunningham'  
**Subject:** E-Pass Technologies v. 3Com, Case No. 00-CV-2255 DLJ (08-20696)

Mr. Oliver -

Please see the enclosed letter from Dan Cislo. Should you have any questions, feel free to contact Mr. Cislo or Kelly Cunningham.

*Christopher Eckart, assisting:*  
*Daniel M. Cislo, Esq.*  
*Cislo & Thomas LLP*  
*1333 2nd Street, Suite 500*  
*Santa Monica, California 90401-4110*  
*(310) 451-0647 -- ext. 128*  
*(310) 394-4477 -- facsimile*  
*[dancislo@cislo.com](mailto:dancislo@cislo.com) -- email*

*Cislo & Thomas LLP*  
*1333 2nd Street, Suite 500*  
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*<http://www.cislo.com>*

*Procurement and Enforcement of Intellectual Property*  
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6/17/2008



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**EXHIBIT 31**

**Oliver, Andrew T.**

---

**From:** Oliver, Andrew T.  
**Sent:** Thursday, June 05, 2008 5:25 PM  
**To:** 'dancislo@cislo.com'; 'Kelly Cunningham'  
**Cc:** Rowland, Mark D.; Palo Alto E-Files; Oliver, Andrew T.  
**Subject:** RE: E-Pass v palmOne et al: meet and confer

Dan and Kelly,

This email is to confirm that we met and conferred today regarding possible motions for sanctions by ACCESS under Rule 37(a)(5) and Rule 37(b).

I informed you of the rule and certain caselaw supporting awards of sanctions wherein the party and attorney may be liable. We agreed that you would consider whether ACCESS would be reimbursed for the approximately \$27,000 spent in pursuing its motion to compel, which was granted without the need for a further motion. You agreed to inform us of the result of this consideration by Friday, June 13. I explained that we did not believe that any of the conditions of Rule 37(a)(5)(A)(i), (ii), or (iii) applied. You did not explain why such conditions might apply in this situation.

With respect to Rule 37(b) and the order compelling discovery, you agreed to follow up with your client to attempt to remedy the discovery issues that we brought to your attention. You agreed to attempt to remedy these issues by Friday, June 13. As I mentioned, while resolution of the issues we specifically addressed will not resolve all of the outstanding violations of the order compelling discovery, resolution will allow us to reevaluate whether a motion for a contempt sanction will be necessary.

In the event that these issues are not resolved by June 13, ACCESS will consider that it has fully attempted to resolve these disputes without involving the court.

Sincerely,  
Andrew

**Andrew T. Oliver**  
**ROPES & GRAY LLP**  
T 650-617-4719 | F 650-566-4156  
525 University Avenue, Suite 300  
Palo Alto, CA 94301-1917  
Andrew.Oliver@ropesgray.com  
[www.ropesgray.com](http://www.ropesgray.com)

---

**From:** Oliver, Andrew T.  
**Sent:** Wednesday, June 04, 2008 3:12 PM  
**To:** dancislo@cislo.com; 'Kelly Cunningham'  
**Cc:** Chris Eckart; Rowland, Mark D.; Palo Alto E-Files  
**Subject:** E-Pass v palmOne et al: meet and confer

Counsel,

I write in response to your letter sent today. We have acted properly and are aware of no basis for a motion against us. Thus, we would like to know the legal and factual grounds upon which you would base any potential motion for sanctions. We do not think that it will be a profitable use of time to meet and confer without having had an opportunity to consider your allegations. In each instance in which we have brought a motion, we have afforded you multiple days to consider the issues that to be raised at a meet and confer. Please provide your basis for a motion as soon as possible.

6/17/2008

We will be prepared to schedule a meet and confer at a reasonable time after receiving your allegations. If you are not willing to provide your factual and legal support before a meet and confer, please inform us. Because, even if you refuse to provide a reasonable opportunity to consider your allegations, we will be willing to meet and confer so as to fulfill our obligations under the local rules.

We will be glad to meet and confer about ACCESS' potential motion(s) on Thursday at 3:30pm. I will plan to call your offices at that time.

Sincerely,  
Andrew

---

**From:** Chris Eckart [mailto:ceckart@cislo.com]  
**Sent:** Tuesday, June 03, 2008 7:08 PM  
**To:** Oliver, Andrew T.  
**Cc:** dancislo@cislo.com; 'Kelly Cunningham'  
**Subject:** E-Pass Technologies v. 3Com, Case No. 00-CV-2255 DLJ (08-20696)

Mr. Oliver -

Please see the enclosed letter from Dan Cislo. Should you have any questions, feel free to contact Mr. Cislo or Kelly Cunningham.

*Christopher Eckart, assisting:*  
*Daniel M. Cislo, Esq.*  
*Cislo & Thomas LLP*  
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*(310) 451-0647 -- ext. 128*  
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**EXHIBIT 32**



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*Attorneys at Law*

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(310) 451-0647  
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WESTLAKE VILLAGE, CA 91361-3006  
(805) 496-1164

June 6, 2008

**VIA EMAIL TRANSMISSION**

EMAIL ADDRESS: andrew.oliver@ropesgray.com

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
525 University Avenue  
Palo Alto, California 94301

**Re: *E-Pass Technologies, Inc. v. 3Com Corp. et al.***  
**Civil Case No. 00-CV-2255 DLJ and Related Matters (08-20696)**

Dear Mr. Oliver:

In response to your June 4, 2008 email message, please be advised that we provided you before our meet and confer exactly what our motion for sanctions would involve before our meet and confer meeting. The legal and factual basis for our motion is that Cislo & Thomas LLP has acted properly at all times, and we are aware of no basis for any such motion against us. We obtained a verification of the supplemental interrogatory responses from our client, as well as a confirmation of its diligence in searching for any responsive documents. Your threatened motion for sanctions directed at Cislo & Thomas LLP appears to be an improper attempt to drive a wedge between us and our client without any basis in either law or fact.

In fact, your notice to us before the meet and confer on your planned motions was not at all informative, either on the law or the facts that you may believe support your motions. You provided no legal authority or factual basis that Cislo & Thomas LLP has done anything improper, other than directing us to, Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 892 F.2d 802 (9th Cir. 1989); Calloway v. Marvel Entertainment (providing no Reporter volume or page number); and Hoffman v. United Parcel Service, Inc., 206 F.R.D. 506 (D. Ks. 2002). We ask that you state in writing the basis for your claims for us to consider.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

CISLO & THOMAS LLP  
*Attorneys at Law*

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
June 6, 2008  
Page 2

Meanwhile, we again request that you not file a motion for Rule 37(a)(5) sanctions or Rule 37(b)(2) contempt sanctions against our client. We also again request that you not file a motion for Rule 37(a)(5) sanctions against this law firm, and we confirm that you agreed not to file a motion for Rule 37(b)(2) contempt sanctions against this law firm unless and until we have had a proper meet and confer on that distinct issue.

Should you have any questions or comments regarding this matter, do not hesitate to contact our office.

Very truly yours,

CISLO & THOMAS LLP



Daniel M. Cislo

DMC/KWC:ce

T:\08-20690\Letter to Oliver re request not to file sanctions motions.DOC



**EXHIBIT 33**



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*Attorneys at Law*

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June 6, 2008

**VIA EMAIL TRANSMISSION**

EMAIL ADDRESS: andrew.oliver@ropesgray.com

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
525 University Avenue  
Palo Alto, California 94301

**Re: *E-Pass Technologies, Inc. v. 3Com Corp. et al.*  
Civil Case No. 00-CV-2255 DLJ and Related Matters (08-20696)**

Dear Mr. Oliver:

In response to your June 5, 2008 email message, we disagree with your characterizations of the meet and confer.

In the interests of specificity, I will point out that, in the meet and confer, you identified only the three Rule 37(a)(5)(A) factors the Court is to consider in its decision whether to award sanctions and the following decisions for your claim that E-Pass and Cislo & Thomas LLP as E-Pass's attorney may be held liable for the award:

Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 892 F.2d 802  
(9th Cir. 1989);

Calloway v. Marvel Entertainment, Inc. (providing no Reporter volume or page  
number); and

Hoffman v. United Parcel Service, Inc., 206 F.R.D. 506 (D. Ks. 2002).

As you mentioned in your email message, you explained that you did not believe *that* any of the conditions of Rule 37(a)(5)(A)(i), (ii), or (iii) applied. You did not, however, provide any explanation *why* you believed this. You merely read the factors, and as to each factor, you said that the facts here did not fall within the factor. I disagreed with your conclusion on each factor.

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CISLO & THOMAS LLP  
*Attorneys at Law*

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
June 6, 2008  
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Without providing any documentation, you claimed your firm spent approximately \$27,000 in pursuing your client's motion to compel. I in no sense "agreed that [either E-Pass or Cislo & Thomas LLP]" would consider reimbursing ACCESS for your supposed \$27,000. Instead, you gave E-Pass and Cislo & Thomas LLP until Friday, June 13, 2008 to make an offer to reimburse this amount or to make a "serious" settlement offer to resolve the appeal as to Palmsource. When I asked if Palmsource had any settlement offer of its own to present, you said you did not know. I asked if Palmsource had a range for a possible settlement amount, such in the three, four, or five-digit range, and you jokingly replied, "just money."

With respect to Rule 37(b) and the order compelling discovery, you again gave us until Friday, June 13, 2008 to follow up with our client to see if there is any more information or documents that might help you understand why our client's production so far does not, according to you, appear to comport with Mr. Hennige's previous deposition testimony. Rather than leaving it vague as to which discrepancies we discussed, I recall discussing the following:

- (1) What happened to the \$20 million in capital and the additional \$5-10 million in legally enforceable promises? You want to see some accounting of what happened to these assets.
- (2) You want to see some documentation related to Niama Capital and Cuatros, including either account statements or agreements between each of these companies and E-Pass.
- (3) You want to see any other subscription agreements in E-Pass's possession or control.
- (4) You want to see any other documentation in E-Pass's possession or control concerning which parts of the subscription agreements have been consummated and which parts remain outstanding.
- (5) You want to see who is June Hennige and what business purpose is there for the payments to her.

Only after I insisted did you provide the following particular deposition dates and pages that, according to you, create an inconsistency with our client's supplemental discovery responses and document production:

- The transcript of Hartmut Hennige's February 1, 2001 deposition:  
pp. 154, 160, and the "surrounding" pages;
- The transcript of Mr. Hennige's February 8, 2005 deposition in the Microsoft case:  
pp. 119, 120, 123, 124, and "surrounding" pages.

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*Attorneys at Law*

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
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As you admitted in your email message, you give us no assurance that compliance with the above-mentioned additional requests will in fact release our client from the threatened motions. You instead specifically held out that you might still file your motion even if E-Pass should make these additional efforts and disclosures, which by now are outside the scope of your discovery requests.

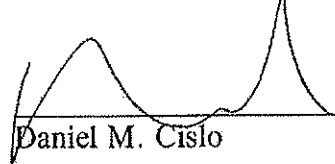
Despite the foregoing differences of opinion, we will nevertheless consider the legal authority and particular deposition testimony that you referenced for the first time at the meet and confer and will attempt to determine by your requested date of next Friday, June 13, 2008 whether our client can supplement its responses any further along the lines of the additional information, documentation, and clarifications that you have requested.

Meanwhile, we again request that you not file a motion for Rule 37(a)(5) sanctions or Rule 37(b)(2) contempt sanctions against our client. We also again request that you not file a motion for Rule 37(a)(5) sanctions against this law firm, and we confirm that you agreed not to file a motion for Rule 37(b)(2) contempt sanctions against this law firm unless and until we have had a proper meet and confer on that distinct issue.

Should you have any questions or comments regarding this matter, do not hesitate to contact our office.

Very truly yours,

CISLO & THOMAS LLP



Daniel M. Cislo

DMC/KWC:ce

T:\08-20696\Letter to Oliver responding to meet and confer summary.DOC

**EXHIBIT 34**

**Oliver, Andrew T.**

---

**From:** Oliver, Andrew T.  
**Sent:** Tuesday, June 10, 2008 12:46 PM  
**To:** 'dancislo@cislo.com'; 'Kelly Cunningham'  
**Cc:** Rowland, Mark D.; Palo Alto E-Files  
**Subject:** E-Pass matter: response to letters of June 6, regarding meet and confer

Dear Dan,

We are in receipt of your letters of June 6, 2008, purporting to summarize the meet-and-confer regarding ACCESS' potential motions for sanctions and a finding of contempt. I am surprised to see that you have attempted to summarize the meeting, as you informed me that you were leaving the room approximately 15 minutes into a telephone meeting that lasted over an hour. I am further surprised that in many instances you stated that you made certain statements during the discussion, yet it was Mr. Cunningham with whom I understood I was speaking.

Our position remains as stated. ACCESS attempted to resolve the issue of the potential Rule 37(a)(5) sanctions during the meeting. I provided the basis (i.e. Rule 37(a)(5)) for the motion in my May 29 discussion with Mr. Cunningham and my email sent 3 days before the meeting. I reviewed the same with Kelly Cunningham during the meeting. I then addressed the three possible exceptions in Rule 37(a)(5)(A) and stated that we do not see any basis for any of those exceptions applying. To my recollection, neither you nor Mr. Cunningham advanced reasons that such exceptions would apply or be raised in an opposition to a motion. Also, to my recollection, Mr. Cunningham agreed to consider whether either your firm or E-Pass would reimburse ACCESS for the expenses it incurred in bringing the motion to compel. Now, your letters of June 6, seem to indicate that you have positions that you did not provide during the meet and confer and that you will not consider reimbursing ACCESS. I remind you of the Court's order of July 14, 2005, wherein the Court stated, "E-Pass is cautioned that it must comply in good faith with the meet and confer requirements . . ." You had a week between my May 29 discussion with Mr. Cunningham and the second meet-and-confer in which to consider your positions. Yet, none were raised during the meet and confer. Accordingly, it is our position that we have strong grounds for a motion, you have not identified any opposition that you could raise, and that the only remaining issue is whether ACCESS will be reimbursed for the expenses that it incurred without the need for court intervention.

Turning now to other issues, with respect to your suggestion that I "jokingly" noted that ACCESS sought a cash offer for a settlement, I note that the statement was not a joke. As we have informed E-Pass several times, a settlement offer by E-Pass should include a cash payment. It may include other consideration, if appropriate. As to your request for a possible range, discovery indicates that E-Pass possesses significant assets. Further, as I mentioned to Mr. Cunningham during the meet-and-confer, E-Pass' appeal brief did not even mention, let alone challenge, significant holdings in favor of ACCESS which support the judgment. Thus, your letter's suggestion of a "three, four, or five-digit" settlement appears to be more of the nature of a joke than my serious suggestion that E-Pass include a cash payment in a settlement offer.

Sincerely,  
Andrew

**EXHIBIT 35**



# **Exhibit 35**

## **Filed Under Seal**

**EXHIBIT 36**

# **Exhibit 36**

## **Filed Under Seal**

**EXHIBIT 37**



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OF INTELLECTUAL PROPERTY

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*Attorneys at Law*

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WESTLAKE VILLAGE, CA 91361-3008  
(805) 496-1164

June 13, 2008

**VIA EMAIL AND FIRST CLASS MAIL**

EMAIL ADDRESS: [andrew.oliver@ropesgray.com](mailto:andrew.oliver@ropesgray.com)

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
525 University Avenue  
Palo Alto, California 94301

**Re: *E-Pass Technologies, Inc. v. 3Com Corp. et al.*,  
Civil Case No. 00-CV-2255 DLJ and Related Matters (08-20696)**

Dear Mr. Oliver:

In response to your concern over who signed our June 6 letter, please see our revised letter that includes my signature as well.

In addition, you acknowledged in your June 6 email message that you merely recited Rule 37(a)(5)(A), which did not really discuss your grounds sufficient to qualify as any meet and confer. You cannot merely recite the Rule and list off three cases for the first time during your telephonic meeting and expect us to discuss our client's opposition to this authority at the meeting itself. More to the point, I hope that your intention was not to merely recite the Rule and list off three cases for the first time at the meeting, and then to attempt to persuade the Court to preclude our opposition to your motion on the grounds that we did not discuss our opposition to this authority at the meeting.

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Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
June 13, 2008  
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#### **A. Supplemental document production**

Nevertheless, we enclose our supplemental responses to ASA's document requests. As you will recall, I called you before the deadline for serving supplemental responses and you gave me your consent to extend the deadline for these supplemental responses in light of the other busy demands from this case at the time. We also enclose supplemental document production, which includes E-Pass Technologies' documents Bates numbered PJ01532 to PJ01542. You will notice that each of these documents is marked as "Highly Confidential – Attorneys' Eyes Only," and we request that you treat these documents accordingly. You will notice that E-Pass is producing unredacted versions of its retainer agreements with this law firm. This shall in no way be construed as any waiver of any attorney-client privilege by either E-Pass or this law firm as no waiver is being made by this production, and we notice that the provisions in these agreements are from our form agreements that are publicly available over our website, [www.cislo.com](http://www.cislo.com). You will also notice that, in the second supplemental responses to ASA's interrogatories, E-Pass identifies communications it has made of Stephen Weiss following ASA's post-judgment discovery requests. This shall in no way be construed as any waiver of any attorney-client privilege by either E-Pass, Moses & Singer, or this law firm as no waiver is being made by these supplemental responses.

Based on your further requests, we also provide you with the following additional information:

#### **B. An ordered accounting of E-Pass assets**

You asked us to get E-Pass to produce an ordered accounting of E-Pass assets. E-Pass, however, already produced for you copies of all of the bank savings and checking account records and cashed checks that E-Pass has in its possession. E-Pass additionally provided you with several expert reports, an opinion letter, and two Federal Circuit decisions from which your client can make its own valuation of the '311 patent. This constituted, as our client's confirmation attested, the totality of E-Pass's accounting of its assets.

You also indicated that you felt that E-Pass had limited its supplemental response to this request to just assets in this country. We assure you E-Pass's confirmation and verification was as to the entire world and that the foregoing documents disclose all of E-Pass's assets throughout the world. In an abundance of caution, we enclose a further supplemental response to ASA's interrogatories clarifying that this supplemental response is as to the entire world.

*Attorneys at Law*

Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
June 13, 2008  
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**C. Ownership information, identifying information, and subscription agreements for E-Pass' shareholders and those who have pledged capital to E-Pass**

You additionally asked us to get E-Pass to produce "ownership information, identifying information, and possibly subscription agreements for E-Pass' shareholders and those who have pledged capital to E-Pass" and any "accounts that E-Pass holds with foreign banking entities." Our client, however, already produced, as our client's verification and confirmation attested, the totality of E-Pass's responsive information and responsive documents in its possession or control. You have not provided to us any basis to suggest that our client has any more documents or information or that its confirmation statement was not truthful.

**D. The business purpose of the payments to June Hennige**

You also asked us to identify the business purpose of the payments to June Hennige. It is our understanding that these payments were for the business purpose of reimbursing ordinary and reasonable business expenses of E-Pass's president, Hartmut Hennige. In an abundance of caution, we enclose a further supplemental response to ASA's interrogatories clarifying this. Since you did not raise any other complaints about the checks E-Pass produced, we trust therefore that the rest of the checks and payments are sufficiently self-explanatory.

**E. Any accounts that E-Pass holds with foreign banking entities and related documentation**

You also asked us to identify the accounts that E-Pass holds with foreign banking entities and related documentation, etc. E-Pass assures us that it does not now have any accounts with any bank other than Citibank. In an abundance of caution, we enclose a further supplemental response to ASA's interrogatories clarifying that the supplemental responses are as to the entire world.

More importantly, as I recall, you spent a good amount of time apologizing for even bringing up the issue of attempting to get your attorneys' fees from this law firm in the motion but that your client's in-house counsel was pushing the issue. You said that your intention was to pressure us in turn to pressure our client to make a legitimate offer of settlement. It is our position, however, that this is an improper purpose of a Rule 37 sanctions motion. We would therefore again request that you not file a motion for sanctions or contempt order against either our client or this law firm.

As for your overt demand that our client present a legitimate settlement offer by today, I am sorry to report that our client cannot afford to make any offer other than to reiterate that it seeks to maintain its intellectual property intact and that it is looking into a malpractice action

CISLO & THOMAS LLP  
*Attorneys at Law*

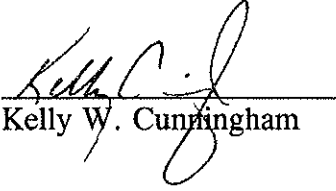
Andrew T. Oliver, Esq.  
Ropes & Gray LLP  
June 13, 2008  
Page 4

against its prior litigation counsel, the damages from which may or may not exceed the current amount of your attorneys' fees award.

Should you have any questions or comments regarding this matter, do not hesitate to contact our office.

Very truly yours,

CISLO & THOMAS LLP

  
Kelly W. Cunningham

KWC:ce

Enclosures:

Second supplemental responses to ASA's interrogatories  
Supplemental responses to ASA's document requests  
Documents Bates numbered PJ01532 - PJ01542  
Second revised privilege log



**EXHIBIT 38**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF TEXAS  
4 HOUSTON DIVISION

5 Civil Action H-02-0439

6 -----x  
7 E-PASS TECHNOLOGIES, INC.,  
8 Plaintiff,

9 -against- Volume II  
10 MICROSOFT CORPORATION, and  
11 COMPAQ COMPUTER CORPORATION,  
12 Defendants.

13 -----x

14  
15 February 8, 2005

16 9:05 a.m.

17  
18 Continued Videotaped Deposition of  
19 HARTMUT HENNIGE, taken by Counsel for the  
20 Defendants, at the offices of Moses & Singer, LLP,  
21 1301 Avenue of the Americas, New York, New York,  
22 before Paula L. Grider, a Registered Professional  
23 Reporter and Notary Public within and for the  
24 State of New York.  
25

<p style="text-align: right;">Page 115</p> <p>1 H. Hennige</p> <p>2 any of those applications?</p> <p>3 A. No.</p> <p>4 Q. Have you exerted any efforts to sell an</p> <p>5 e-pass device for use in those applications?</p> <p>6 A. Yes.</p> <p>7 Q. In terms of financial applications,</p> <p>8 what efforts did you exert to sell E-Pass devices</p> <p>9 in that area?</p> <p>10 A. Well, I spoke to many people during the</p> <p>11 past at trade shows or wherever, and I tried to</p> <p>12 explain what the idea of E-Pass to do business</p> <p>13 with organizations such in medical field,</p> <p>14 financial, government and so on. All</p> <p>15 hypothetical.</p> <p>16 Q. And is your principal effort currently,</p> <p>17 in terms of business efforts that you personally</p> <p>18 have, devoted to E-Pass?</p> <p>19 A. Yes.</p> <p>20 Q. And over how many years have you -- has</p> <p>21 E-Pass and your efforts to persuade people to do</p> <p>22 business with E-Pass, how long has that been your</p> <p>23 principal effort?</p> <p>24 A. Since by the time, several years.</p> <p>25 Q. Since approximately 1994?</p>	<p style="text-align: right;">Page 117</p> <p>1 H. Hennige</p> <p>2 Q. Let me direct your attention to the</p> <p>3 next page. There is listed there "Operating System</p> <p>4 &amp; File Management."</p> <p>5 Did you prepare this?</p> <p>6 A. No.</p> <p>7 Q. Do you understand what is meant by</p> <p>8 Virtual application layer?</p> <p>9 A. No.</p> <p>10 Q. It refers to EPOS (E-Pass Operating</p> <p>11 System)?</p> <p>12 A. Yes.</p> <p>13 Q. Does such a thing exist?</p> <p>14 A. I don't know.</p> <p>15 Q. And there's also listed Open</p> <p>16 Application Layer, Microsoft Windows CE V2.1.1.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I see it.</p> <p>19 Q. Do you have an understanding of why the</p> <p>20 E-Pass operating system is needed along with the</p> <p>21 Microsoft Windows CE?</p> <p>22 A. No, I don't know.</p> <p>23 Q. Is there a person within E-Pass who is</p> <p>24 responsible for software for use with an e-pass</p> <p>25 device?</p>
<p style="text-align: right;">Page 116</p> <p>1 H. Hennige</p> <p>2 A. I don't know.</p> <p>3 Q. And would you say that you've given</p> <p>4 your best efforts to interest people in the E-Pass</p> <p>5 concept?</p> <p>6 A. I don't know.</p> <p>7 Q. Well, how much time typically in a week</p> <p>8 do you spend currently with respect to trying to</p> <p>9 interest people in E-Pass?</p> <p>10 A. I honestly don't know.</p> <p>11 Q. 10 hours?</p> <p>12 A. Maybe less. It depends. Some days more.</p> <p>13 Some days less. I don't know.</p> <p>14 Q. Do you have any other business efforts</p> <p>15 currently other than E-Pass?</p> <p>16 A. Yes. I'm involved in lots of -- I just</p> <p>17 bought a harmonica factory in East Germany not too</p> <p>18 long ago, and I'm involved in music projects.</p> <p>19 Some of my friends are going to launch musical</p> <p>20 projects, so I have a box set for Blind Willie</p> <p>21 McTel, so if you want to buy a copy, Mr. Sutton,</p> <p>22 you can do so on the Internet.</p> <p>23 Q. All right. At least that is not</p> <p>24 fictional, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 118</p> <p>1 H. Hennige</p> <p>2 A. No.</p> <p>3 Q. Do you know who prepared this page?</p> <p>4 A. I don't.</p> <p>5 (Hennige Exhibit 15, Group of Documents</p> <p>6 Bates Nos. EP 4093 - 4211, was marked for</p> <p>7 identification.)</p> <p>8 Q. I'm marking as Exhibit Number 15, a</p> <p>9 group of pages that run from EP 4093 through 4211,</p> <p>10 I believe all-inclusive, but I have not checked</p> <p>11 that. And the first page of this, there is a</p> <p>12 writing, "Subscription Agreements"?</p> <p>13 A. Yes.</p> <p>14 Q. Is that your handwriting?</p> <p>15 A. No.</p> <p>16 Q. Have you seen this page before?</p> <p>17 A. No.</p> <p>18 Q. Have you seen the subsequent pages</p> <p>19 before?</p> <p>20 A. You mean the following page?</p> <p>21 Q. Yes, sir, following pages. If you could</p> <p>22 just take a moment to go through these pages, and</p> <p>23 I want to just confirm that these are subscription</p> <p>24 agreements for E-Pass International.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 119</p> <p>1 H. Hennige</p> <p>2 Q. And currently what is the approximate</p> <p>3 total amount of subscription agreements for E-Pass</p> <p>4 International?</p> <p>5 A. The amount being paid in or the amount</p> <p>6 being pledged?</p> <p>7 Q. That has been pledged or paid in.</p> <p>8 A. I don't know.</p> <p>9 Q. I believe in the Palm deposition you</p> <p>10 mentioned the \$20 million figure?</p> <p>11 A. Yes.</p> <p>12 Q. Does that sound about right?</p> <p>13 A. It does, yes.</p> <p>14 Q. In the past four years, have there been</p> <p>15 any additional subscription agreements?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know approximately totaling how</p> <p>18 much in that period of time?</p> <p>19 A. No, I don't have the exact figure.</p> <p>20 Q. Are there currently pledges to invest</p> <p>21 money in E-Pass International?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know approximately the total of</p> <p>24 those pledges?</p> <p>25 A. Between 10 and 20 million.</p>	<p style="text-align: right;">Page 121</p> <p>1 H. Hennige</p> <p>2 Q. Let's go to the second page of Exhibit</p> <p>3 Number 15.</p> <p>4 A. Yes.</p> <p>5 Q. There is a name that's handwritten</p> <p>6 there Ahmad Ali -- I'll let you pronounce the last</p> <p>7 name, if you can.</p> <p>8 A. Abdulmonem.</p> <p>9 Q. Who is that?</p> <p>10 A. He is a friend in Saudi Arabia.</p> <p>11 Q. And the next page says Mohamad Saleh Al</p> <p>12 Saleh?</p> <p>13 A. Yes.</p> <p>14 Q. Who is that?</p> <p>15 A. That is also friend in Saudi Arabia.</p> <p>16 Q. Next page says Rajaa Ismail Abdallah?</p> <p>17 A. Same.</p> <p>18 Q. Friend in Saudi Arabia?</p> <p>19 A. Yes.</p> <p>20 Q. Then on page -- down at the lower</p> <p>21 right-hand corner, EP 410L, believe it refers to</p> <p>22 Werner Vogt?</p> <p>23 A. Which number?</p> <p>24 Q. 4104.</p> <p>25 A. 4104, I've got it here.</p>
<p style="text-align: right;">Page 120</p> <p>1 H. Hennige</p> <p>2 Q. In terms of money that has already been</p> <p>3 invested into E-Pass, do you have an approximate</p> <p>4 amount of that money separate and apart from the</p> <p>5 pledges?</p> <p>6 A. That will be between 5 and 10 million.</p> <p>7 Q. In terms of the pledges that are</p> <p>8 outstanding, are there any contingencies on those</p> <p>9 pledges?</p> <p>10 A. No.</p> <p>11 Q. So they are committed?</p> <p>12 A. Yes.</p> <p>13 Q. And I believe earlier today you said</p> <p>14 that they are friends and family?</p> <p>15 A. Yes.</p> <p>16 Q. Are any of the investors in E-Pass</p> <p>17 International U.S. companies?</p> <p>18 A. No companies.</p> <p>19 Q. Are there any U.S. citizens?</p> <p>20 A. As investors?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. Who are they?</p> <p>24 A. Friends and family, like -- I don't</p> <p>25 know. I would have to look up my files.</p>	<p style="text-align: right;">Page 122</p> <p>1 H. Hennige</p> <p>2 Q. Okay. I believe it's Werner Vogt?</p> <p>3 A. That's correct, yeah.</p> <p>4 Q. Who is that?</p> <p>5 A. He is a friend and the owner of</p> <p>6 Interlock, the Swiss company</p> <p>7 Q. Where does he reside?</p> <p>8 A. In Zurich.</p> <p>9 Q. Zurich, Switzerland?</p> <p>10 A. Yes.</p> <p>11 Q. Go to the next page, if you would,</p> <p>12 please, to 4105?</p> <p>13 A. Yes.</p> <p>14 Q. There's listed there 500,000 shares?</p> <p>15 A. Yes.</p> <p>16 Q. I don't know how to match that up with</p> <p>17 who the investor is.</p> <p>18 Do you know who an investor is of</p> <p>19 500,000 shares?</p> <p>20 A. It's the same gentleman, because you</p> <p>21 see on the front page, you see on 4103, where it</p> <p>22 says on the top, Mr. Vogt, you see listed the</p> <p>23 shares.</p> <p>24 Q. All right. Thank you. And so the total</p> <p>25 investment of Mr. Vogt is 9,300,000 shares?</p>

**EXHIBIT 39**

# **Exhibit 39**

## **Filed Under Seal**

**EXHIBIT 40**

# **Exhibit 40**

## **Filed Under Seal**



**EXHIBIT 41**

# **Exhibit 41**

## **Filed Under Seal**